

17-0616

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA: 18

CARL CLARK,

Plaintiff,

v.

Civil Action No. 15-C-1470  
Honorable Charles E. King, Jr.

KANAWHA COUNTY BOARD OF  
EDUCATION,

Defendant.

**ORDER GRANTING JUDGMENT AS A MATTER OF LAW TO  
DEFENDANT KANAWHA COUNTY BOARD OF EDUCATION**

On November 15, 2016, Defendant, Kanawha County Board of Education, moved for judgment as a matter of law pursuant to Rule 50 of the *West Virginia Rules of Civil Procedure* against the Plaintiff, Carl Clark, based upon the evidence presented during the Plaintiff's case in chief. Prior to the commencement of jury selection, the Plaintiff withdrew his Tort of Outrage claim and claim for past and future lost wages, and claim for punitive damages. Thus, the only issues remaining to be decided in the trial of this matter were whether the Defendant engaged in age discrimination in violation of the West Virginia Human Rights Act and whether the Plaintiff was entitled to receive emotional distress damages as a result.

The trial of these issues commenced on November 14, 2016, wherein the parties selected a jury, presented opening statements, and the Plaintiff, Carl Clark, testified. On November 15, 2016, the trial reconvened and the Plaintiff presented testimony from Capital High School's Principal Larry Bailey, former Assistant Principal Matthew Shock, and former Athletic Director Cody Clay. Several exhibits and stipulations were also admitted in evidence. Both parties were given the opportunity to examine each witness. The Court, relying upon the evidence presented, the applicable law, and giving the Plaintiff every reasonable and legitimate inference favorable to

him, **FINDS** that there is no legally sufficient evidentiary basis for a reasonable jury to find for Plaintiff based upon the evidence presented during the Plaintiff's case in chief. Accordingly, the Court **GRANTS** the Defendant's Motion for Judgment as a Matter of Law.

The evidence was presented as follows:

- 1) The Plaintiff brought his claim against the Defendant alleging age discrimination, because, after 21 seasons, his position was posted and he was not retained as the Head Basketball Coach for the Capital High School Boys Basketball team for the 2015-2016 basketball season.
- 2) The Plaintiff served under a continuing contract of employment as a full time teacher for the Defendant for over 40 years.
- 3) During his teaching career, he served as a coach in different capacities within Kanawha County. Specifically, he served as the Head Coach at Capital High School approximately 21 seasons thru the end of the 2014-2015 basketball season.
- 4) In October of 2014, the Plaintiff resigned his teaching position with Kanawha County Schools but continued to be employed as the Head Coach at Capital High School the season following his resignation.
- 5) The Head Coach position for the Boys' Basketball Team at Capital High School was not posted as open in October 2014, and Plaintiff continued to serve as Head Coach for the 2014-2015 season.
- 6) From April 24-April 30, 2015, the head coaching position was posted on the County Job Vacancy Hotline.
- 7) The Plaintiff completed and submitted the online application on April 24, 2015, the same day the job was initially advertised. Plaintiff was 68 years old at this time.

- 8) The committee offered the position to 35 year old Matthew Greene, who was a fulltime certified professional educator at Capital High School, and Kanawha County Schools hired Greene on June 8, 2015.
- 9) A change in the law applicable to coaching position hiring preferences went into effect on June 12, 2015.
- 10) The Defendant presented evidence and argument that Plaintiff's position was posted, interviews were conducted and Plaintiff was not hired as the Head Coach of the Capital High School Boys' Basketball Team for the 2015-2016 season because the Defendant was required to follow the laws and regulations in place prior to June 8, 2015. Defendant argued that as a result of the application of the laws and regulations in place prior to June 8, 2015, Defendant was required to offer the position to Mr. Greene. Defendant maintained that Plaintiff's age was not a motivating factor in its decision to replace the 68 year old Plaintiff with a 35 year old certified employed teacher.
- 11) The Plaintiff presented evidence and argument that the Defendant was not required to post the Head Coach position as available and was not required to follow the laws and regulations in place prior to June 8, 2015; and that even if the law in place prior to June 8, 2015 was followed, Defendant still could have retained Plaintiff as Head Basketball Coach for the Capital High School Boys Basketball team for the 2015-2016 basketball season. Plaintiff maintains that age was a motivating factor in Defendants' decision to post the job as available and/or in the decision to replace the 68 year old Plaintiff with a 35 year old certified employed teacher.

**Whereupon**, after careful consideration of the above facts and applicable law, the Court finds as

follows:

1) The Court finds the Kanawha County Board of Education's Motion for Judgment as a Matter of Law should be **GRANTED** because there is not a legally sufficient evidentiary basis for a reasonable jury to find for the Plaintiff on his claim of age discrimination.

2) Rule 50(a) of the *West Virginia Rules of Civil Procedure* states as follows:

Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

3) In making its ruling:

When a motion is made for a directed verdict, the court should entertain every reasonable and legitimate inference favorable to the litigant opposing such motion fairly arising from the evidence, considered as a whole, and assume as true those facts which a jury might properly find under the evidence.

Syl. Pt. 1, *Lambert v. Goodman*, 147 W. Va. 513, 514, 129 S.E.2d 138, 139 (1963). The Court has relied upon the evidence presented and the law applicable to this matter and, as required, gives the Plaintiff the benefit of every reasonable and legitimate inference favorable to him and assumes those facts which a jury might properly find under the evidence.

4) The Plaintiff in this case alleges the Defendant used the Plaintiff's age as a motivating factor in its decision to post his job and ultimately not to hire him as the Head Coach for the Capital High School Boys' Basketball Team for the 2015-2016 season. According to the Supreme Court:

[A] plaintiff bears the burden of proving by a preponderance of the evidence that the alleged forbidden bias was a motivating factor in the defendant's decision to take an adverse action against the plaintiff. If the plaintiff carries that burden, then the jury should find for the plaintiff unless the defendant can prove by a preponderance of the evidence that it would have taken the same action in the absence of the impermissible motive.

See *Barlow v. Hester Indus.*, 198 W. Va. 118, 135-136, 479 S.E.2d 628, 645-646 (1996).

Furthermore:

[A] plaintiff can prevail, even though [he] has not proven pretext, if she has otherwise shown that a prohibited bias entered into the defendant's decision. In that context, the mixed motive case, the defendant has acted for unlawful as well as lawful reasons, and we have accordingly shifted the burden of persuasion on the issue of causation to the defendant and required it, to avoid liability, to prove the same decision would have been made in the absence of the unlawful reason.

See *Id.* at 138,648; citing to *Skaggs v. Elk Run Coal Co.*, 198 W. Va. 51, 479 S.E.2d 561 (1996); *Barefoot v. Sundale Nursing Home*, 193 W.Va 475, n. 16, 457 S.E.2d 152, n. 16 (1995). However, the law further provides that an employer has a right to make employment decisions for good reasons, bad reasons, or no reason at all, absent discrimination. *Skaggs v. Elk Run Coal Co.*, 198 W. Va. 51, 479 S.E.2d 561 (1996).

5) The evidence presented in the Plaintiff's case in chief is absent of any discriminatory motive based on the Plaintiff's age in the Defendant's decision not to hire him for the 2015-2016 basketball season. No evidence exists that the decision not to hire the Plaintiff was based on age. Undisputed, legitimate, non-discriminatory reasons existed that resulted in another candidate being chosen for the basketball coaching position.

6) Accordingly, the Court finds no evidence sufficient to create a triable issue of discriminatory animus or to shift the burden of persuasion to the Defendant. See *Skaggs v. Elk Run Coal Co.* 198 W. Va. 51, 77, 479 S.E.2d 561, 587 (1996). The record lacks a legally sufficient evidentiary basis for a reasonable jury to find the Defendant used the Plaintiff's age as a motivating

factor to post his job as open and then not to hire him for the 2015-2016 season.

7) The Court carefully considered the testimony of the Plaintiff, Capital High School Principal Larry Bailey, former Athletic Director Cody Clay, and former Assistant Principal Matthew Shock. The Court reviewed, evaluated and considered the exhibits and stipulations admitted into evidence. Based on a review of and consideration of all of the evidence, the Court **FINDS** no legally sufficient evidentiary basis for a reasonable jury to find the Kanawha County Board of Education discriminated against the Plaintiff on the basis of his age. *See Skaggs v. Elk Run Coal Co.* 198 W. Va. 51, 77, 479 S.E.2d 561, 587 (1996); Rule 50 of the *West Virginia Rules of Civil Procedure*. There is no legally sufficient evidence that the Defendant used the Plaintiff's age as a motivating factor in its posting/hiring decision for Capital High School Boys' Basketball Coach for the 2015-2016 season. As a result, the Defendant, Kanawha County Board of Education, is entitled to judgment as a matter of law.

Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

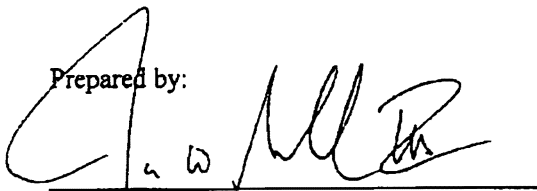
- 1) The Defendant Kanawha County Board of Education's Motion for Judgment as a Matter of Law is **GRANTED**.
- 2) Judgment is rendered against the Plaintiff, Carl Clark, and in favor of the Defendant, Kanawha County Board of Education on all remaining claims and each party shall be responsible for its own attorney's fees.
- 3) Costs shall be taxed by the clerk against the Plaintiff, Carl Clark, pursuant to Rule 54(d) of the *West Virginia Rules of Civil Procedure*.
- 4) With all issues in this matter being resolved, this case is hereby **DISMISSED** with prejudice and forever stricken from the Court's docket.
- 5) The Plaintiff's exceptions and objections are noted.

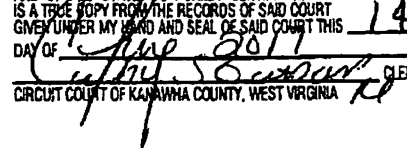
- 6) The Circuit Clerk of Kanawha County, West Virginia is directed to forward copies of this Order Granting Judgment as a Matter of Law to all parties and counsel of record: Charles R. Bailey and James W. Marshall, III, Bailey & Wyant, P.L.L.C., P.O. Box 3710, Charleston, West Virginia, 25337-3710 and Richard W. Walters, and Todd A. Mount, Shaffer & Shaffer, PLLC, 2116 Kanawha Blvd, PO Box 3973, Charleston, WV 25339.

ENTER this 13<sup>TH</sup> day of June, 2017.

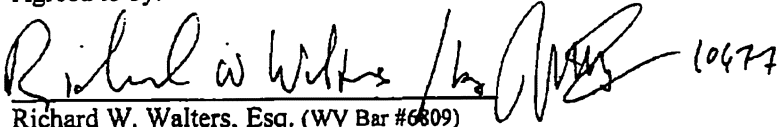
  
Honorable Charles E. King, Jr.

Prepared by:

  
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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 14  
DAY OF June 2017  
  
CATHY S. GATSON, CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Agreed to by:

  
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